

# Exhibit 1

**UNITED STATES DISTRICT COURT**  
**WESTERN DISTRICT OF NEW YORK**

**If you were an hourly delivery driver at Insomnia Cookies, a lawsuit may affect your rights.**

*A court authorized this notice. This is not a solicitation from a lawyer.*

- Employees have sued Serve U Brands, Inc., Insomnia Cookies, LLC, and Seth Berkowitz (“Defendants”). The lawsuit at issue was filed on July 11, 2017 against Defendants in the United States District Court for the Western District of New York. The employees allege that Defendants violated the Federal Fair Labor Standards Act (“FLSA”) by (1) failing to reimburse delivery drivers for vehicle costs and/or related expenses; (2) failing to provide tip credit notice as required by the FLSA; and (3) improperly excluding mandatory service charges and/or “additional wages” from the regular rate of pay. Defendants deny the Plaintiffs’ allegations and deny that they are liable to the Plaintiffs for any of the back pay, damages, costs or attorneys’ fees sought.
- The Court has allowed the lawsuit to be conditionally certified as a collective action on behalf of current and former hourly delivery drivers.
- The Court has not decided whether Defendants did anything wrong. There is no money available now and no guarantee there will be. However, your legal rights are affected, and you have a choice to make now:

**YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT**

|                           |   |
|---------------------------|---|
| <b>ASK TO BE INCLUDED</b> | <b>Join in this lawsuit. Await the outcome.<br/>Give up right to sue separately.</b><br><br>By joining, you keep the possibility of getting money or benefits that may come from a trial or a settlement. But, you give up any rights to sue Defendants separately about the same legal claims in this lawsuit. |
| <b>DO NOTHING</b>         | <b>Do nothing. Get no benefits from this lawsuit. Keep right to sue separately.</b><br><br>If you do nothing and money or benefits are later awarded, you won’t share in those. But, you keep any rights to sue Defendants separately about the same legal claims in this                                       |

|  |          |
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|  | lawsuit. |
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- Your options are further explained in this notice.

## **BASIC INFORMATION**

### **1. Why did I get this Notice?**

The purpose of this Notice is to inform you of the existence of a collective action lawsuit in which you potentially are “similarly situated” to the named Plaintiffs. It also explains what you need to do to participate, or not participate, and how your rights may be affected.

### **2. What is a collective action and who is involved?**

In a collective action lawsuit, one or more people sue on behalf of other people who have similar claims. The lawsuit at issue was filed on July 11, 2017 against the Defendants in the United States District Court for the Western District of New York. Specifically, the named Plaintiffs (in this case, Skyler Lusk, Tia Council, Viktoria O’Brien, and Justin Byroad) seek to sue on behalf of hourly delivery drivers who have worked at Insomnia Cookies at any time within the three years preceding July 11, 2017 (or who are currently employed there), who were not paid proper minimum wage rate, not reimbursed for car and/or other related costs, and not compensated properly for overtime hours.

### **3. What does the lawsuit complain about?**

The named Plaintiffs allege that Defendants violated the Federal Fair Labor Standards Act by failing to pay hourly delivery drivers adequate minimum wages, reimbursement for mileage and other related expenses, and improperly calculating their overtime rate of pay. The lawsuit is seeking back pay and liquidated damages from Defendants, as well as costs and attorneys’ fees to compensate such eligible employees.

### **4. How do Defendants answer?**

Defendants deny the Plaintiffs’ allegations and deny that they are liable to the Plaintiffs for any of the back pay, damages, costs or attorneys’ fees sought.

### **5. Has the Court decided who is right?**

The Court has taken no position in this case regarding the merits of the Plaintiffs’ claims or the Defendants’ defenses.

## YOUR RIGHTS AND OPTIONS

### 6. How do I join?

You may join this case (that is, you may “opt-in”) by completing and mailing the attached “Consent to Become Party Plaintiff” form to the Plaintiffs’ counsel at the following address:

Jessica L. Lukasiewicz, Esq.  
THOMAS & SOLOMON LLP  
693 East Avenue  
Rochester, NY 14607  
1-877-272-4066

The form must be sent to the Plaintiffs’ counsel so that it is returned or post-marked by no later than **[insert deadline 60 days after mailing]**. If you fail to return or post-mark the Consent form by the deadline, you may not be able to participate in this lawsuit.

### 7. What if I do nothing?

If you do not join the lawsuit, you will not be part of the case in any way and will not be bound by or affected by the result (whether favorable or unfavorable). Your decision not to join this case will not affect your right to bring a similar case on your own at a future time. However, claims under the Fair Labor Standards Act must be brought within 2 years of the date the claim accrues, unless the employer's violation of the law was “willful,” in which case the claim must be brought within 3 years.

### 8. I am afraid Defendants may take some action against me if I join.

Federal law prohibits Defendants from discharging or in any other manner discriminating against you because you “opt-in” to this case or have in any other way exercised your rights under the Fair Labor Standards Act.

### 9. Do I have to do anything to help out with the lawsuit once I join?

The lawyers will handle most of the presentation of the case. From time-to-time, your lawyers may ask you for information which you would need to provide. While this suit is proceeding, you also may be required to respond to written questions, participate in depositions (i.e. answer questions from Defendants’ attorneys prior to trial), and/or testify in court. If you are asked to give information, your legal team will work with you so that the process is as convenient for you as possible.

## THE LAWYERS REPRESENTING YOU

### 10. Do I have a lawyer in this case?

The law firm Thomas & Solomon LLP is the counsel representing the named and opt-in Plaintiffs in this action.

Unless you choose another lawyer (see below) these attorneys will represent you in the action if you choose to join.

### 11. Should I get my own lawyer?

You do not need to hire your own lawyer because Thomas & Solomon LLP is working on your behalf. However, you can join this lawsuit by counsel of your own choosing. If you do so, you must post-mark an “opt-in” consent form by **[insert deadline 60 days after mailing]**.

### 12. How will the lawyers be paid?

If the attorneys get money or benefits for the employees, they may ask the Court for fees and expenses. You won't have to pay these fees and expenses. If the Court grants the lawyers' request, the fees and expenses would be either deducted from any money obtained for the Plaintiffs or paid separately by Defendants.

If the Plaintiffs obtain money or benefits as a result of the trial or a settlement, you will be notified about how to participate. We do not know how long this will take.

## GETTING MORE INFORMATION

### 13. Are more details available?

Further information about this Notice, the deadline for returning a Consent to Become Party Plaintiff, or questions concerning this lawsuit may be obtained by writing or phoning the named Plaintiffs' counsel at:

Jessica L. Lukasiewicz, Esq.  
THOMAS & SOLOMON LLP  
693 East Avenue  
Rochester, NY 14607  
1-877-272-4066

**E-mail:** [ContactUs@theemploymentattorneys.com](mailto:ContactUs@theemploymentattorneys.com)

## CONSENT TO BECOME A PARTY PLAINTIFF

I consent to become a “party plaintiff,” named, or a representative plaintiff in any Fair Labor Standards Act action for unpaid wages and related relief against my employer(s), including Insomnia Cookies, and any related entity or person, on behalf of myself and other former and current employees of the employer(s).

I wish to preserve and pursue any claim that I may have to the greatest extent possible. Therefore, I expressly consent to the use of this consent form for purposes of making me a party plaintiff in any lawsuit and/or lawsuits that plaintiffs’ attorneys have brought and/or may bring on behalf of myself and other employees alleged to be similarly situated.

I authorize the representative plaintiffs or plaintiffs’ attorneys to file this consent with the Clerk of the Court. I hereby further authorize and designate the named plaintiffs to act on my behalf concerning the litigation, this investigation, consideration of settlement and attorneys’ fees and costs, and all other matters pertaining to this lawsuit.

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Signature

Date

---

Print Full Legal Name

# INFORMATION SHEET

Please keep us informed of any changes to your contact information



(PLEASE FILL OUT COMPLETELY)

Name \_\_\_\_\_  
First Name Last Name

Home Phone ( \_\_\_\_ ) - \_\_\_\_ - \_\_\_\_

Address \_\_\_\_\_

Cell Phone ( \_\_\_\_ ) - \_\_\_\_ - \_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

E-Mail Address \_\_\_\_\_

Social Security Number 

|   |   |   |   |   |   |   |  |  |  |  |
|---|---|---|---|---|---|---|--|--|--|--|
| X | X | X | — | X | X | — |  |  |  |  |
|---|---|---|---|---|---|---|--|--|--|--|

Any personal identification information that you provide to us will only be used to protect your interests and the class members' in this lawsuit.

I am/was employed by Insomnia Cookies

|               |           |     |     |
|---------------|-----------|-----|-----|
| Work Location | Job Title | / / | / / |
| Start Date    | End Date  |     |     |
|               |           |     |     |
| Work Location | Job Title | / / | / / |
| Start Date    | End Date  |     |     |
|               |           |     |     |
| Work Location | Job Title | / / | / / |
| Start Date    | End Date  |     |     |
|               |           |     |     |
| Work Location | Job Title | / / | / / |
| Start Date    | End Date  |     |     |

Please note that any attorney-client relationship with you will start only if we submit your Consent Form in court seeking payment of unpaid wages and other claims arising out of wage and hour law.

PLEASE RETURN TO Thomas & Solomon LLP  
693 East Avenue  
Rochester, New York 14607

If you have any additional questions, feel free to contact the law firm above at  
www.theemploymentattorneys.com (website) ContactUs@theemploymentattorneys.com (e-mail)  
1.877.272.4066 (telephone M-F 9:00A—5:30P ET) 1.877.272.0574 (facsimile)

**Thomas & Solomon LLP**  
THE EMPLOYMENT ATTORNEYS

693 East Avenue • Rochester, NY 14607

First Name Last Name  
Address 1 Address 2  
City, State Zip Code

**Thomas & Solomon LLP**  
THE EMPLOYMENT ATTORNEYS

**BUSINESS REPLY MAIL**

FIRST-CLASS MAIL PERMIT NO. 174 ROCHESTER NY

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ROCHESTER NY 14607-9942



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